

1 KEVIN V. RYAN (CASBN 118321)
United States Attorney

2 EUMI CHOI (CSBN 87940)
3 Chief, Criminal Division

4 CHRISTOPHER P. SONDERBY (CASBN 166574)
Assistant United States Attorney

5 150 Almaden Boulevard, Suite 900
6 San Jose, California 95113
7 Telephone: (408) 535-5037
Facsimile: (408) 535-5066

8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION
12

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 PERRY ZHENG,

17 Defendant.
18

No. CR 02-20046 RMW

PLEA AGREEMENT

19
20 I, Perry Zheng, and the United States Attorney's Office for the Northern District of
21 California (hereafter "the government") enter into this written plea agreement (the "Agreement")
22 pursuant to Rules 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

23 The Defendant's Promises

24 1. I agree to plead guilty to a Superseding Information charging me with Trafficking in
25 Counterfeit Goods, in violation of 18 U.S.C. § 2320(a). I agree that the elements of the offense
26 of trafficking in counterfeit goods are that: (1) I trafficked in goods or services; (2) the trafficking
27 was intentional; (3) I used a counterfeit mark on or in connection with the goods or services; (4) I
28 knew the mark was counterfeit. I am further aware that the maximum penalties for this offense

FILED
MAY - 9 2005
RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

1 are as follows:

- | | | | |
|---|----|---------------------------------|---------------------|
| 2 | a. | Maximum prison sentence | 10 years |
| 3 | b. | Maximum fine | \$2,000,000 |
| 4 | c. | Maximum supervised release term | 3 years |
| 5 | d. | Mandatory special assessment | \$100 |
| 6 | e. | Restitution | Determined by Court |
| 7 | f. | Possible Deportation | |

8 2. I agree that I am guilty of the offense to which I will plead guilty, and I agree that the
9 following facts are true:

10 (a). From at least April 2000 to April 2002, I, along with William Jin, operated
11 a software distribution business known as PTI, which was located in San Jose, California.
12 During that time period, I intentionally trafficked in counterfeit software programs and
13 documentation bearing counterfeit marks of Microsoft Corporation, including software marks for
14 Windows 98, Windows NT Server, and Office 2000 Professional Edition. I participated in the
15 distribution the counterfeit copies of these software programs for personal financial gain. The
16 transactions in counterfeit software bearing counterfeit marks included a sale on March 31, 2000,
17 when I sold 15 counterfeit copies of Microsoft Windows 98 for \$525.

18 (b). I agree the Court shall include as relevant conduct under the Sentencing
19 Guidelines all of the transactions in counterfeit products and counterfeit End User License
20 Agreements ("EULAs"). I agree that the total value of the counterfeit products with counterfeit
21 marks that I am responsible for selling and possessing is \$531,436.80, which is also the amount
22 that should be used to determine the loss amount pursuant to sections 2B5.3 and 2F1.1 of
23 Sentencing Guidelines (incorporating amendments effective November 1, 1998). This amount
24 includes \$27,550 in counterfeit sales to undercover agents or confidential informants,
25 \$387,228.80 (80 percent of invoices totaling \$484,036) in counterfeit sales to Beyond 2k and
26 N.M. Tech, and \$116,658 worth of counterfeit products found at a storage locker under the
27 control of myself and William Jin during the execution of a search warrant.

28 3. I agree to give up all rights that I would have if I chose to proceed to trial,

1 including the rights to a jury trial with the assistance of an attorney; to confront and cross-
2 examine government witnesses; to remain silent or testify; to move to suppress evidence or raise
3 any other Fourth or Fifth Amendment claims; to any further discovery from the government; and
4 to pursue any affirmative defenses and present evidence.

5 4. I agree to give up my right to appeal my conviction, the judgment, and orders of the
6 Court. I also agree to waive any right I may have to appeal my sentence.

7 5. I agree not to file any collateral attack on my conviction or sentence, including a
8 petition under 28 U.S.C. §2255, at any time in the future after I am sentenced, except for a claim
9 that my constitutional right to the effective assistance of counsel was violated.

10 6. I agree not to ask the Court to withdraw my guilty plea at any time after it is entered.

11 7. I agree to relinquish to the government any right I may have in any capacity to any of
12 the materials seized by law enforcement agents from me, William Jin, PTI or any related entity in
13 connection with this investigation. In addition, I agree not to file or cause to have filed any
14 motion pursuant to Fed. R. Crim. P. 41(g) for return of such property.

15 8. I agree to the Court's entry of an order of forfeiture pursuant to 18 U.S.C. §§
16 981(a)(1)(C) (as incorporated by 28 U.S.C. § 2461 (c)), and Federal Rule of Criminal Procedure
17 32.2 at or before sentencing for the amount of \$27,550, which represents proceeds I received
18 from the sale of counterfeit products to undercover agents and confidential informants.
19 Accordingly, I stipulate and agree that as part of his sentence the Court shall, pursuant to Fed. R.
20 Crim. P. 32.2(b), order a forfeiture money judgment against me in the amount of \$27,550, owed
21 jointly and severally with co-defendant William Jin. Further, I agree to pay the forfeiture money
22 judgment by cashier's check made payable to the United States Marshals Service, delivered to
23 the United States Attorney's Office, Financial Litigation Unit, 450 Golden Gate Avenue, San
24 Francisco, California 94102. I agree to execute all documents necessary to effectuate the entry
25 and enforcement of the above-described money judgment.

26 9. In return for the government's promises set out below, I agree to pay restitution for all
27 the losses caused by all the offenses with which I was charged in this case, and I agree that the
28 amount of restitution will not be limited to the loss attributable to the count to which I am

pleading guilty, pursuant to 18 U.S.C. § 3663(a)(3). I agree that this amount of restitution is appropriate even though it relates to conduct not charged in the Superseding Information, pursuant to 18 U.S.C. § 3663(a)(3). Specifically, I agree to pay restitution to Microsoft Corporation in the amount of \$387,753.80 ^{jointly & severally with codefendants} in a time and manner as prescribed by the Court or Probation Officer. I agree that I will make a good faith effort to pay any fine, forfeiture or restitution I am ordered to pay. Before or after sentencing, I will, upon request of the Court, the government, or the U.S. Probation Office, provide accurate and complete financial information, submit sworn statements and give depositions under oath concerning my assets and my ability to pay, surrender assets I obtained as a result of my crimes, and release funds and property under my control in order to pay any fine, forfeiture, or restitution. I agree to pay the special assessment at the time of sentencing.

10. I agree that the Court will calculate my sentencing range under the Sentencing Guidelines incorporating amendments effective November 1, 1998. I understand that the Court, while not bound to apply the Guidelines, must consult those Guidelines and take them into account when sentencing. I agree that regardless of the sentence that the Court imposes on me, I will not be entitled, nor will I ask, to withdraw my guilty plea. I also agree that the Sentencing Guidelines range will be calculated as follows and that I will not ask for any other adjustment to or reduction in the offense level or for a downward departure from the Guidelines range:

- | | | |
|----|--|-----|
| a. | Base Offense Level, U.S.S.G. § 2B5.3 | +6 |
| b. | Specific Offense Characteristic
(Loss amount between \$500,000 and \$800,000
pursuant to U.S.S.G. § 2F1.1) | +10 |
| c. | Acceptance of responsibility:
(If I meet the requirements of
U.S.S.G. § 3E1.1) | -3 |
| d. | Adjusted offense level | 13 |

I agree that a sentence of imprisonment within the Guideline range dictated by these calculations is reasonable, and that I will not seek a sentence of imprisonment below the low end of that Guideline range. I agree that, regardless of any other provision in this agreement, the government may and will provide to the Court and the Probation Office all information relevant

1 to the charged offenses or the sentencing decision. I also agree that the Court is not bound by the
2 Sentencing Guidelines calculations above, the Court may conclude that a higher guideline range
3 applies to me, and, if it does, I will not be entitled, nor will I ask, to withdraw my guilty plea.

4 11. I agree not to commit or attempt to commit any crimes before sentence is imposed or
5 before I surrender to serve my sentence; violate the terms of my pretrial release (if any);
6 intentionally provide false information or testimony to the Court, the Probation Office, Pretrial
7 Services, or the government; or fail to comply with any of the other promises I have made in this
8 Agreement. I agree that, if I fail to comply with any promises I have made in this Agreement,
9 then the government will be released from all of its promises, but I will not be released from my
10 guilty plea.

11 12. I agree that this Agreement contains all of the promises and agreements between the
12 government and me, and I will not claim otherwise in the future.

13 13. I agree that this Agreement binds the U.S. Attorney's Office for the Northern District
14 of California only, and does not bind any other federal, state, or local agency.

15 The Government's Promises

16 14. The government agrees to move to dismiss the pending indictment against defendant
17 at the time of sentencing.

18 15. The government agrees not to file or seek any additional charges against the
19 defendant that could be filed as a result of the investigation that led to the pending indictment.

20 16. The government agrees to recommend the Guidelines calculations set out above.

21 The Defendant's Affirmations

22 17. I confirm that I have had adequate time to discuss this case, the evidence, and this
23 Agreement with my attorneys, and that they have provided me with all the legal advice that I
24 requested.

25 18. I also confirm that I understand that my attorney, Scott Furstman, also represents
26 William Jin, the co-defendant in this case, and both defendants in United States v. Ni, et al. (CR
27 04-20133 RMW). I understand that the defendants in the Ni case owned a business known as
28 Eagle Crest, which purchased approximately \$775,000 worth of computer products from my

1 business, PTI, during 1998 and 1999. I represent that those computer products were genuine, not
2 counterfeit, and that no illegal activity occurred in connection with those transactions.
3 Nevertheless, I understand that the Ni case is still pending, and that investigation into the nature
4 of the business relationship between PTI and Eagle Crest is continuing. In light of this business
5 relationship, I understand that there is a potential that I may be considered a witness against the
6 defendants in the Ni case, and that the Ni defendants could possibly be witnesses in a criminal
7 case against me. I further understand that Mr. Furstman's simultaneous representation of me,
8 Mr. Jin, and the defendants in the Ni case gives rise to a potential conflict of interest.
9 Specifically, I understand that I am entitled to representation by an attorney with undivided
10 loyalty to me and my interests, and that there is a potential that Mr. Furstman's loyalties may be
11 divided among me, Mr. Jin and the defendants in the Ni case. I represent that I have consulted
12 with an independent lawyer, Mr. Allen Schwartz, who has advised me of the risks of a potential
13 conflict of interest arising from Mr. Furstman's representation of me, Mr. Zheng, and the
14 defendants in the Ni case. I further understand that there I am entitled to independent counsel to
15 advise me concerning the potential conflict arising from Mr. Furstman's joint representation of
16 me and Mr. Zheng, and that I waive that right. With a full and complete understanding of these
17 risks, I confirm that I waive any potential conflict of interest arising from Mr. Furstman's
18 representation of me, Mr. Jin, and the Ni defendants, that I wish Mr. Furstman to represent me in
19 this matter, and that I am fully satisfied with Mr. Furstman's representation of me.

20 19. I confirm that while I considered signing this Agreement and, at the time I signed it, I
21 was not under the influence of any alcohol, drug, or medicine.

22 20. I confirm that my decision to enter a guilty plea is made knowing the charges that
23 have been brought against me, any possible defenses, and the benefits and possible detriments of
24 proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no
25 one coerced or threatened me to enter into this agreement.

26 Dated: 5/5/05


Defendant PERRY ZHENG

1 KEVIN V. RYAN
2 United States Attorney

3 Dated: 5-9-05

4 CHRISTOPHER P. SONDERBY
5 Assistant United States Attorney
6

7 I have fully explained to my client all the rights that a criminal defendant has and all the
8 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement
9 and all the rights he is giving up by pleading guilty, and, based on the information now known to
10 me, his decision to plead guilty is knowing and voluntary.

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12 Dated: May 8, 2005

13 SCOTT FURSTMAN
14 Attorney for Defendant
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